IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1984 OF 2003

1. Hemant Madhukar Gosavi)
Jaymala Apartments, Vzira Naka,)
Borivali (W), Mumbai - 400 083)

2. Prakash Rajaram Shenavi)
Hawa Bai Chawl, Haji Bapu Road,)
Malad (East),Mumbai 400 097)

3. Uttam Dima Yadav)
Chawl No.2, Room No.2, Mohata)
Bhawan Rahivasi Sangh, Worli)
Naka, Mumbai 400 018.)

4. Kamalesh Kumar Dashrathlal)
Jaiswal, Baneshwar Sadan,)
R.No.14, 1st floor,)
Sasmira marg, Worli, Mumbai-25)

5. Nilesh Dashrah Parkar)
Anandibai Bhuvan Chawl No.1,)
R.No.8, Sarvoday Nagar,)
Bhandup, Mumai 78.)

6. Shivkumar Singh Ramratan Singh)
Sobnath Chaube Ki Chawl,Saibaba,)
Kurla Road,Andheri (E),Mumbai-69)

7. Dattatray Maruti Patil,)
Shrikrishna Zopadpatti, R.No.228/1
Sasmira Marg, Worli, Lower)
Parel Camp, Mumbai 25.)

8. Lahoo Kamloo Patil,)
R.No.50, Behind Dalda Company,)
Sion (e), Mumbai-22.)

9. Sudarshan Maruti Rasal,)
Khar Tin Bungalow, Nirmal Nagar)
Chawl No.152, Room No.14,)
Railway Quarters, Khar (E),)
Mumbai - 52.)

10. Suryaji Shriram Patekar,)
K.K. Modi Wadi, Wani Chawl)
No.1, Rokom No.52, T.J.Road,)
Sewri, Mumbai-15.)

11. Dilip Sakharam Gavaskar)
Jijamata Nagar, R.No.B/61,G.D.)
Ambekar Marg, Kala Chowky,)

Mumbai 33.)

12. Babulal Dhanai Dhure,)
Ramkumar Pan Bhandar,)
Opp. Dahisar Railway Station,)
L.T. Road, Dahisar)
Mumbai 68.)

13. Mahendra Shivraj Aroskar)
Shastri Nagar, R.No.210,)
Nr. Bhusa Co-op. Prabhadevi,)
Mumbai-25.)..Petitioners

Versus

1. M/s. Century Textiles & Industries)
Ltd. P.B. Marg, Worli,)
Mumbai 400 025.)

2. General Manager,)
M/s. Century Textiles &)
Industries Ltd. P.B. Marg,)
Worli, Mumbai 400 025.)

3. Jaidruth Shankar Jadhav)
15/38, Century kamgar Niwas,)
P.B. Marg, Worli, Mumbai-25.)

4. Rajesh Raghunath Dalvi)
3/65, Shapurji palanji Chawl,)
Nr.prabhadevi Road,)
Mumbai 25.)

5. Dilip Sonu Phale,)
30/48, Andhar Chawl, Anant G.)
Pawar lane, Ferbunder Road,)
Mumbai 27.)

6. Industrial Court, Bandra at)
Mumbai.)..Respondents

Mr. I.A.Engineer for the petitioners.
Mr. S.P.Singh for Respondent No.1.

CORAM: S.K.SHAH,J.

DATE : 3rd October,2005.

ORAL JUDGMENT:-

1. Heard. The petitioners challenge the order passed by the Industrial Court on 24.1.2003 whereby the Application under Section 95 of the Bombay Industrial Relations Act, 1949 (for short, "BIR Act") for review was allowed and changed his own order

earlier passed on 18.3.2002 in Appeal (IC) No.58 of 2001 in Applications (BIR) Nos. 118 to 145 & 147 to 149 of 1999.

2. Brief facts leading to this Writ Petition are as follows :-

. The petitioners herein and the Respondents Nos. 3 to 5 - the employees and the employer Respondent No.1 entered into an agreement dated 8th August, 1998. The employees were Badli workers. In the agreement, clauses 7 and 8 were incorporated whereby the Respondent Mill Company guraranteed work days to the Badli workers who will give 1000 linear mitres production. The badli workers were divided into three groups. The first group was of those Badli workers who were employed during 1.1.1983 and 31.12.1988.The workers in the first group were guraranteed 21 working days if they reported for work for 26 days in a month. The second group consisted of badli workers who were employed during 1.1.1989 to 31.12.1992. The work days guaranteed were 20 days provided these workers reported for work for 26 days in a month. The third group consisted of Badli workers who were employed during 1.1.1993 to 31.12.1996. The work days guraranteed to these workers were 16 days in a month if they reported for 26 days in a month. Clause 8

provided that to achieve the aforesaid objective, the Mill Company would provide work as agreed, but the badli workers will have to work on any category or post in the department, as directed by the Management.

3. The lists of badli workers as per groups were prepared as per shifts in which they were working. It is undisputed that all these workers were working as Badli trimmers.

4. The employees filed Application (BIR) Nos. 118 to 125 and 147 to 149 of 1999 claiming permanency. Pending those applications, they jointly moved an application numbered as U-8 claiming certain reliefs. The Labour Court by order dated 6.8.2001, rejected that Application. Therefore, the aforesaid Appeal came to be filed before the Industrial Court.

5. In the Appeal, the order of the Labour Court was reversed and the following order came to be passed on 3.4.2002 :-

"(1) Appeal 9IC) No.58 of 2001 is hereby partly allowed :

(2) The Order of the trial Judge dated 08/08/2001 is hereby set aside.

(3) The respondents (Opponents) are hereby directed to give the work of trimmer to the employees as per seniority and in accordance with the agreement, whenever the work of trimmer is available.

(4) The respondents (Opponents) are hereby further directed to pay the scale to the employees as fixed for their grade of Export Cimoca Trimmmer.

(5) Appeal is hereby disposed of accordingly."

Subsequently, an application under Section 95 of the BIR Act came to be filed by the Mill Company against the Respondents herein alleging that there is some confusion/misunderstanding between the workers concerned and the Management in connection with the order passed by the Industrial Court as a result of which every day dispute cropped up regarding assignment of work and therefore they prayed for review and modification of the order. The Industrial Court passed the impugned order on 24.1.2003. It reads as under :-

"(1) Review applications (ULP) Nos. 1 to 16 are hereby partly allowed.

(2) The reliefs at Sr.Nos. (3) and (4) in the final order dated 18/03/2002 in Appeal (IC) No.58 of 2001 are hereby modified as under :

"The applicant Company is hereby directed to provide work as per the clauses no.7 and 8 of the agreement dated 08/08/1998 to the concerned employees and the opponents employees are hereby directed to work as per clauses 7 and 8 of the said agreement.

The opponents employees are entitled to work as Trimmer if the same work is available. In other cases, they will work on any category or post to complete the quota as per the said agreement.

The applicant company is hereby directed to pay wages to the concerned employees as fixed for the category/

post during pendency of the original applications under the BIR Act,1946."

6. It is against this order, the present Writ Petition was filed. The learned Counsel for the petitioners submits that the scope in a review petition filed under Section 95 of the said Act is only to correct the mistake and not to review his own order on merits. He submits that the effect of the later order passed by the Industrial Court is to wipe out the criteria of seniority in giving work to the badli workers as per clauses 7 and 8 of the agreement. he further submits that the criteria of seniority was fixed by the Industrial Court by giving specific reasons and therefore it was on merits. He further submits that it is not a mistake and therefore such correction could not have been made by the Industrial Court in a Review Petition under Section 95 of the BIR Act.

7. As against this, the learned Counsel for the Respondent No.1 submitted that fixing the criteria of seniority for implementation of the agreement was a mistake. He further submitted that the Management was facing difficulty in implementing the order and therefore the order was rightly passed.

8. It is, therefore, necessary to see whether the Industrial Court committed illegality or impropriety in passing the aforesaid review order exceeding his jurisdiction under review exercised under the provisions of Sec. 95 of the BIR Act.

9. The Apex Court in the case of **Lily Thomas etc. etc. vs. Union of India and others, reported in AIR 2000 SC 1650,** had an occasion to consider the scope of review. Although that was a case under review as contemplated under Order 47 Rule 1 of C.P.C. The word "review" has the same connotation while interpreting the provisions and scope of the word used in Section 95 of the BIR Act. The observations of the Apex Court are as under :-

> "55. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review...."

On this principle, the present case will have to be considered.

10. It is pertinent to note that the first order that was passed on 3.4.2002 directed the Respondents to give work of trimmer to the employees as per seniority and in view of the agreement dated 8.8.1998 and further directed to pay the same to the employees as fixed for their grade. In para 10 of the said order, the Industrial Court specifically observed as under :-

> "...Thus, it appears that the trial judge has not considered this aspect that the opponents forced to work on lower grade with low pay and the opponents refused to give work of trimmer to the senior though available. As discussed above, the agreement dated 08/08/1998 above that the employees have to work on any post in any category, as directed by the Management. However, the said agreement does not disclose that the employees are required to work on lower scales than the scale of their post of trimmer, and the opponents

> are authorised to give work of lower grade to the seniors though the work of trimmer is available".

It is after giving reasons that criteria of seniority was incorporated in the agreement for assigning work to the employees.

11. In allowing review and modifying the order the only consideration was that the dispute arose in assignment of work as was explained by the Respondent in that

application and for this reason the criteria of seniority was removed and the impugned order came to be passed. The effect of the impugned order is that the work would be given to the badli workers as per the agreement itself. The operative part of the order is as under :- "The opponents employees are entitled to work as Trimmer if the same work is available. In other case, they will work on any category or post to complete the quota as per the said agreement." This is nothing more than leaving the matter to the discretion of the employer. 12. It therefore clearly appears that this was not a review as explained by the Apex Court only to correct the mistake. In fact Industrial Court reviewed the case on merits and withdrew the criteria of seniority given by him. Therefore it amounted to

exceeding the jurisdiction under Section 95 of the BIR Act.

13. Much has been made by the Respondents that following the criteria of seniority would entitle the senior persons alone to get work as trimmer which attracts higher wages than the other work. The employer cannot put forward this ground for getting the order passed by the Industrial Court reviewed. That aspect is a matter of consideration on merits. If at all the employer is not satisfied with the said order following the criteria of seniority, the first order of the Industrial Court should have been challenged on merits. It was argued before the Industrial Court that there were, in fact, no grievances from any of the employers in this regard. It is undisputed that all the employees were badli workers working as trimmer. They had, in fact, claimed permanency. It is further undisputed fact that there were three groups of employees shift-wise made as per the period of their employment. It is further pertinent to note that as per clause 7, the employees falling in the first group were guaranteed 21 days, those falling in 2nd group 20 days and those falling in 3rd group guaranteed 16 days. Thus, the agreement itself provides criteria of seniority. As such, there was no substance in making grievance.

Clause 8 of the agreement in fact gave discretion to the Management to give work to the employees as per the sweet will and would have in fact created disturbance in industrial relations as was tried to be submitted on behalf of the Respondents.

14. Under the circumstances, the Industrial Court had committed illegality as well as impropriety in allowing the Review Application under Section 95 of the BIR Act. In fact, the Industrial Court had exceeded its jurisdiction. The said order therefore shall have to be set aside.

15. Therefore, the order dated 24.1.2003 passed by the Industrial Court in Review applications (IC) Nos. 1 to 16 of 2002 in Appeal (IC) No.58 of 2001, Applications (BIR) Nos. 118 to 145 & 147 to 149 of 1999 is hereby set aside.

Rule made absolute accordingly.

16. The learned Counsel for the Respondents requests for staying this order for a period of four weeks. The learned Counsel for the petitioners has nothing to say. The order is stayed for a period of four weeks from today.

(S.K.SHAH,J.)